

FCC MAIL SECTION

Federal Communications Commission

DA 98-439

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DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Plattsmouth and Papillion, Nebraska,
and Osceola, Iowa)¹

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)
)
) MM Docket No. 96-95
) RM-8787
) RM-8838
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)

ORDER TO SHOW CAUSE

Adopted: March 4, 1998

Released: March 13, 1998

Comment Date: May 4, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 11 FCC Rcd 4732 (1996), issued in response to the petition for rule making filed by Platte Broadcasting Company, Inc. ("Platte"), proposing the substitution of Channel 295C3 for Channel 295A at Plattsmouth, Nebraska, and the modification of Station KOTD-FM's license to specify operation on the higher class channel. To accommodate the allotment at Plattsmouth, we also proposed the substitution of Channel 296C2 for Channel 295C2 at Osceola, Iowa, and the modification of Station KJJC's license to specify the alternate Class C2 channel. In response to the Notice, petitioner filed comments reiterating its intention to apply for Channel 295C3, if allotted to Plattsmouth. In addition, LifeStyle Communications Corp. ("LifeStyle"), licensee of Station KJJC, Osceola, filed an opposition and counterproposal. Platte and LifeStyle both filed reply comments.

2. LifeStyle, in its counterproposal, requests that Channel 295A be allotted to Papillion, Nebraska, as the community's first local aural service. To accommodate the allotment at Papillion, Lifestyle also requests that Channel 299A be substituted for Channel 295A at Plattsmouth, and the modification of Platte's license for Station KOTD-FM accordingly.²

3. In order to proceed with this proceeding, it is necessary to issue an Order to Show Cause to Station KOTD-FM, Channel 295A, Plattsmouth, Nebraska, seeking comment on why its license should not be modified to specify operation on Channel 299A in lieu of Channel 295A. Although Platte is provided an opportunity to object to the proposed channel change, this

¹ The community of Papillion, Nebraska, has been added to the caption.

² Public Notice of the filing of the counterproposal was given on July 11, 1996, Report No. 2142.

Order does not afford an additional opportunity either to comment on the merits of the proposal set forth in the Notice or the proposal advanced in LifeStyle's timely counterproposal to the Notice. See Angola, Indiana, et al., 5 FCC Rcd 2000 (1990). An engineering analysis confirms that Channel 299A can be allotted to Plattsmouth in compliance with the Commission's minimum distance separation requirements at Station KOTD-FM's licensed transmitter site. In addition, Channel 295A can be allotted to Papillion with a site restriction of 11.5 kilometers (7.1 miles) northeast to avoid a short-spacing to Stations KEZG, Channel 297C1, Lincoln, Nebraska, KEXL, Channel 294C, Norfolk, Nebraska, and KEFM, Channel 241C, Omaha, Nebraska.³

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Platte Broadcasting Company, licensee of Station KOTD-FM, Plattsmouth, Nebraska, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 299A as proposed herein instead of the present Channel 295A.

5. Pursuant to Section 1.87 of the Commission's Rules, Platte may, not later than May 4, 1998, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Platte to furnish additional information. If Platte raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Platte will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the licensee of Station KOTD-FM, as follows: Platte Broadcasting Company, Inc., 625 First Avenue, Plattsmouth, NE 68048.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making

³The coordinates for Channel 299A at Plattsmouth are 41-05-28 North Latitude and 95-48-15 West Longitude. The coordinates for Channel 295A at Papillion are 41-12-08; 95-55-35.

proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
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